

# Notice of Allowability

## Application No.

09/555,093

## Examiner

Malgorzata A. Walicka

## Applicant(s)

NAPIER, JOHNATHAN A.

## Art Unit

1652

### -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 07/09/04.
2. ☒ The allowed claim(s) is/are 1,3,4,12,14,39-43,45 and 46.
3. ☒ The drawings filed on 22 August 2000 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>5/24/00, 2nd page</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material  | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.   |

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The Response to Final Office Action filed July 9, 2004, is acknowledged. Claims 1, 4 and 46 are amended; claims 2, 5-11, 13 and 23 have been cancelled; claims 15-22 and 24-38 were canceled in the amendment of Jan. 13, 2003. Claims 1, 3, 4, 12, 14 and 39-46 are pending and are the subject of this Office Action.

### **Detailed Office Action**

#### **2. Rejections**

##### ***2.1. 35 U.S.C. section 112, first paragraph***

Rejection of claims 2 and 5-7 is moot because the claims have been cancelled.

##### ***2.4. 35 U.S.C., section 102***

Rejection of claim 13 is moot because the claim has been cancelled.

#### **3. Examiner's amendment**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

(a) Delete claim 44.

(b) Amend claim 1 as follows:

1. An isolated and purified polypeptide having  $\Delta^6$  desaturase activity which comprises [one or more amino acid deletions, insertions or substitutions relative

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to a polypeptide comprising the amino acid sequence as shown in SEQ ID NO: 2, but at least 90% amino acid sequence identity here with] an amino acid sequence that is at least 95% identical to SEQ ID NO: 2.

(c) Make claim 3 dependent on claim 1.

(d) In claim 39, line 4, delete --, wherein the polypeptide has desaturase activity--.

(e) Amend claim 46 as follows:

46. An isolated and purified polypeptide having  $\Delta^6$  desaturase activity, [and] which comprises [at least 100 amino acids of the amino acid sequence as shown in] a fragment of SEQ ID NO: 2, wherein said fragment has  $\Delta^6$  desaturase activity.

Authorization for this examiner's amendment was given in a telephone interview with Lisa M. Hemmendinger on August 18, 2004.

### 3. Conclusion

Claims 1, 3, 4, 12, 14, 39-43 and 45-46 are allowed. The reasons for allowable subject matter were stated in the Office Action of August 13, 2002.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Malgorzata A. Walicka, Ph.D., whose telephone number is (571) 272-0944 and the right fax number is (571) 273-0944. The examiner can normally be reached Monday-Friday from 10:00 a.m. to 4:30 p.m. EST.

If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy, Ph.D. can be reached on (571) 272-0928. The fax phone number for this Group is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to

Malgorzata A. Walicka, Ph.D.

Patent Examiner

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REBECCA A. WALICKA  
PATENT EXAMINER  
09/14/2009  
1652